

substantial factor in Defendants' actions; and Defendants would have taken the same actions regardless of Plaintiff engaging in protected activity. (Filing [154](#).)

With regard to the portion of Defendants' Motion for Summary Judgment based on qualified immunity, I note that after the parties filed their summary-judgment materials, the Order on Final Pretrial Conference (Filing [173](#)) was filed, which stated: "Because plaintiff's only remaining claims are for declaratory and injunctive relief, plaintiff's claims against the defendants are official capacity claims. All individual capacity claims against all defendants have been abandoned by the plaintiff and are dismissed with prejudice." (Filing [173](#) at CM/ECF p. 3.) Because "[q]ualified immunity only applies to claims against public officials in their individual capacities," [*Serna v. Goodno*, 567 F.3d 944, 952 \(2009\)](#) (citing [*Kentucky v. Graham*, 473 U.S. 159, 166-67 \(1985\)](#)), and because Plaintiff has abandoned all individual-capacity claims, the portion of the Motion for Summary Judgment based on qualified immunity shall be denied as moot.

As to the remainder of the Motion for Summary Judgment, suffice it to state that in the parties' almost 3,000 pages of summary-judgment materials (Filings [154](#), [155](#), [156](#), [157](#), [159](#), [160](#), [161](#), [163](#), [164](#), [166](#), [171](#)), there are genuine issues of material fact precluding the entry of summary judgment regarding the nature of Defendants' actions taken against Plaintiff and the motivating factor behind those actions, as well as credibility issues. Therefore, the remainder of Defendants' Motion for Summary Judgment (Filing [154](#)) shall be denied as well.

Other Motions

Defendants' Motion to Seal Pursuant to Protective Order (Filing [158](#)), Plaintiff's Motion to Seal Pursuant to Protective Order (Filing [162](#)), and Plaintiff's Motion to Strike Brief (Filing [167](#)) are all unopposed and shall be granted.

IT IS ORDERED:

1. All individual-capacity claims against all defendants are dismissed with prejudice, as Plaintiff has abandoned such claims.
2. From this date forward, the case caption shall reflect that all defendants are sued in their official capacities only.
3. Paragraphs (C) 2-5 of the Order on Final Pretrial Conference (Filing [173](#) at CM/ECF p. 3), which lists as a controverted issue whether Defendants are entitled to qualified immunity, shall no longer be considered a “controverted and unresolved issue” for resolution at the non-jury trial in this matter.
4. Defendants’ Motion for Summary Judgment (Filing [154](#)) based on qualified immunity is denied as moot, and the remainder of the motion is denied due to genuine issues of material fact precluding the entry of summary judgment.
5. The unopposed Plaintiff’s Motion to Seal Pursuant to Protective Order (Filing [162](#)) is granted, and the Clerk of Court shall seal Exhibits 158, 159, 160, 161, 172, 173, 174, 175, 177, and 178 to Plaintiff’s Index of Evidence (Filings [163](#) & [164](#)) in opposition to Defendants’ Motion for Summary Judgment.
6. The unopposed Defendants’ Motion to Seal Pursuant to Protective Order (Filing [158](#)) is granted, and the Clerk of Court shall seal Exhibits 15, 17, 41, 55, 56, 57, 58, and 59 to Defendants’ Index of Evidence (Filing [159](#)) in Support of Defendants’ Motion for Summary Judgment.
7. The unopposed Plaintiff’s Motion to Strike Brief (Filing [167](#)) is granted, and Plaintiff’s first-filed Brief in Opposition to Defendants’ Motion for Summary Judgment (Filing [165](#)) shall be stricken.

DATED this 4th day of February, 2014.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.